

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ANTOLIN ANDREW MARKS,

Petitioner(s),

v.

PETER D. KEISLER,

Respondent(s).

NO. C07-1608MJP

ORDER ADOPTING REPORT AND  
RECOMMENDATION

The above-entitled Court, having received and reviewed:

1. Magistrate Judge Theiler's Report and Recommendation (Dkt. No. 5)
2. Petitioner's Motion for Judicial Notice (Dkt. No. 7)
3. Petitioner's Amended Opposition to the Magistrate's Findings and Recommendation (Dkt. No. 8)

and all exhibits and declarations attached thereto, makes the following ruling:

IT IS ORDERED that the Report and Recommendation is ADOPTED, and Petitioner's habeas petition is DISMISSED with prejudice.

**Discussion**

The lengthy and convoluted procedural history that brings Petitioner before this Court for his fifth habeas petition will not be recited here. The Introduction and Background contained in the Report and Recommendation are adopted and incorporated by reference.

The 99-page petition filed herein is a complex amalgam of mistaken identity claims, allegations of multiple procedural defects and novel legal theories. The Court agrees with the Magistrate Judge that Petitioner's claims regarding his citizenship and the improprieties in his removal proceedings are outside of the jurisdiction of this forum. The sole avenue for review of a citizenship claim is by direct

1 petition for review to the United States Court of Appeals. INA § 242(b)(5), 8 U.S.C. § 1252(b)(5);  
2 see Baeta v. Sonchik, 273 F.3d 1261, 1263-64 (9th Cir. 2001). The REAL ID Act of 2005 has  
3 divested district courts of habeas jurisdiction to consider challenges to final removal orders. See  
4 REAL ID Act of 2005, Pub.L.No. 109-13, Div. B, 119 Stat. 231 (May 11, 2005).

5 Petitioner claims that many of the procedural defects he is challenging lie outside of his  
6 citizenship and immigration claims. But he has appealed all of those defects to the Ninth Circuit Court  
7 of Appeals and been turned down. Rudder v. Gonzales, No. 07-71756 (9th Cir. filed May 3, 2007).  
8 It is, ultimately, that refusal by the appellate court to consider his arguments that he is claiming as  
9 error in this habeas petition. The district court has no jurisdiction to consider appellate court error,  
10 and Petitioner's remedy does not lie with this Court.

11 Petitioner's habeas petition is ordered DISMISSED with prejudice.

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13 The clerk is directed to provide copies of this order to all counsel of record.

14 Dated: December \_\_20\_\_, 2007

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16 /s Marsha J. Pechman  
17 Marsha J. Pechman  
18 United States District Judge  
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